IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 148 of 1999

in

SPECIAL CIVIL APPLICATIONNo 328 of 1999

with

LETTERS PATENT APPEAL No 129 of 1999
In
SPECIAL CIVIL APPLICATION NO.601 OF 1999
with

LETTERS PATENT APPEAL No 255 of 1999
IN
SPECIAL CIVIL APPLICATION NO.903 OF 1999

with
LETTERS PATENT APPEAL NO.481 OF 1999
IN
SPECIAL CIVIL APPLICATION NO.1735 OF 1999

With
Civil Applications Nos.7701 to 7704 of 2001
In
Letters Patent Appeals Nos.129,255,481 and 148 of 1999

With
Civil Application No.655 of 1999
In
Letters Patent Appeal No.148 of 1999

With
Civil Application No.567 of 1999
In
Letters Patent Appeal No.129 of 1999

With
Civil Application No.1571 of 1999
In
Letters Patent Appeal No.255 of 1999

With
Civil Application No.3687 of 2000
In

Civil Application No.2709 of 2000
In
Civil Application No.655 of 1999
In
Letters Patent Appeal No.148 of 1999

With
Misc. Civil Applications No.1626 & 1690 of 2000
In
Civil Application No.2709/2000
in
Civil Application No.655/99
In
Letters Patent Appeal No.148 of 1999

With
Civil Application No.174 of 2000
In
Civil Application No.567 of 1999
In
Letters Patent Appeal No.129 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KISAN FERTILIZERS
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 148 of 1999
MR KS JHAVERI for Appellants

Ms.Harsha Devani, learned AGP, for respondents
Nos.1 and 2
Mr.P.K.Jani, Mr.Tushar Mehta, Mr.N.D.Nanavati with
Mr.H.C.Buch, Mr.H.P.Raval, Mr.P.M.Thakkar
with Mr.Y.M.Thakkar, Mr.D.T.Dave,
Mr.B.B.Naik, Ms.Kusum M.Shah, and Ms.K.J.Brahmbhatt
for respective respondents.

2. LETTERS PATENT APPEAL No. 129 of 1999
MR MH RATHOD for Appellant
Ms.Harsha Devani, learned AGP, for
respondents Nos.1 and 2
Mr.P.K.Jani for respondent No.3

3. LETTERS PATENT APPEAL No. 255 of 1999
MR KETAN D SHAH for Appellants
Ms.Harsha Devani, learned AGP for respondents 1 and 2
Mr.P.K.Jani for respondent No.3

4. LETTERS PATENT APPEAL NO.481 OF 1999

Mr.K.D.Shah for appellant
Ms.Harsha Devani, learned AGP, for
respondents Nos.1 and 2
Mr.P.K.Jani for respondent No.3

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 14/08/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1 . Letters Patent Appeal No.148/99 arises out of the judgment and order dated 4.2.99 passed by the learned single Judge in Special Civil Application No.328/99 filed by Kisan Fertilizers and 24 other traders against the State of Gujarat, Deputy Director, Agricultural Marketing and Rural Finance and District Registrar, Co-operative Societies and the Agricultural Produce Market Committee, Deesa respondents Nos.1 to 3 respectively. This Special Civil Application No.328/99 was rejected by the learned single Judge on the ground that decision of allotment of shops by the Agricultural Produce Market Committee at Deesa was subject to the revisional jurisdiction of the Director of Agricultural Marketing and Rural Finance of

the Government of Gujarat and the State Government had still wider power under Sec.48 of the Gujarat Agricultural Produce Markets Act, 1963 to go into and examine the proceedings of Director of Agricultural Marketing and Rural Finance or of any Market Committee. Learned single Judge has held that the petitioners had an efficacious and alternative remedy against the decision of the Market Committee.

Letters Patent Appeal No.129/99 arises out of the judgment and order dated 3.2.99 passed in Special Civil Application No.601/99 as was preferred by one Shri Jaswantlal Shantilal Shah, a trader carrying on business in the rented premises situated within the Market area of the Agricultural Produce Market Committee, Deesa, whereby Special Civil Application was rejected on the ground that the same was premature and that against the final decision to be taken by the Agricultural Produce Market Committee alternative remedy was available to the petitioner under Sec.48 of the Act.

Letters Patent Appeal No.255/99 arises out of Special Civil Application No.903/99 filed by traders, named Mafatlal and Parsottambhai and Co. and one Shri Bharatkumar Kevalbhai Shankle of Deesa, which was rejected by the learned single Judge by his order dated 12.2.99 on the ground that alternative remedy under Sections 47 and 48 of the Act was available to them and that even otherwise the petition could not be entertained as the petitioners slept over their rights and did not avail the remedy available against the Resolution of the Agricultural Produce Market Committee, Deesa with regard to the allotment of the shops.

Letters Patent Appeal No.481/99 arises out of Special Civil Application No.1735/99 filed by a trader, named Parsottambhai Vaktabhai, which was rejected by the learned single Judge by his order dated 10.3.99 on the ground that the petitioner had not applied for the allotment of the shops and also that action with regard to the allotment of the shops by the Market Committee was subject to revisional powers of Director of Agricultural Produce Market Committee and the State Government and that remedy had also not been availed.

2. Whereas all these matters involve a common question with regard to the allotment of the shops by the Agricultural Produce Market Committee at Deesa and common question of law based on identical facts are involved, we propose to decide all these four Letters Patent Appeals by this common judgment and order as under:-

Brief history and the background:

-- Under Bombay Agricultural Produce Market Act, 1939, a Market Committee was constituted for Deesa Taluka on 21.11.57.

-- The said Committee passed a Resolution No.11 on 21.12.57 and different other Resolutions on subsequent dates and as per these Resolutions 38 plots were leased out to individuals and Panjrapole for developing the same.

-- In 1958, 14 traders were allotted shops on permanent lease as they had shifted their business from the old Market yard.

-- With the coming into force of the Agricultural Produce Market Act, 1963, the aforesaid Agricultural Produce Market Committee, Deesa was deemed to be a Market Committee established and set up under the Gujarat Agricultural Produce Market Committee under the said Act. This market Committee has a principal Market yard at Deesa and sub market Yard at Bhildi, Taluka Deesa and Vegetable Sub-market Yard near Sardar Baug, Deesa.

-- During 1970-75, eleven shops were given on lease on renewal basis for every 3 years.

-- Prior to 1986 various kinds of vegetables and foods were not regulated commodity falling within the purview of Gujarat Act, 1963 and they were not regulated items to be dealt with and traded only through Agricultural Produce Market Committee.

-- By Notification dated 19.7.86 these commodities i.e. items of vegetable and food were brought within the purview of the regulated commodity under the Gujarat Act and the Rules framed thereunder.

-- On 2.12.87 the area in question i.e. City Survey No.323, which had been earlier declared as Revenue Survey No.22 of Sheet No.40 as the principal market yard by the State of Bombay, was denotified as market yard and the new market yard started its operation on Patan Palanpur Highway.

-- The plots were leased out by charging construction cost and at that time 106 occupiers were occupying the shops in the sub market yard.

-- On 18.1.88 the Market Committee issued notices to all occupiers for vacating the premises.

-- During 25.2.88 to 5.3.88, 54 occupiers have challenged the action of the Agricultural Produce Market Committee seeking to vacate them and Civil Suits were filed before Civil Judge (J.D.), Deesa. The remaining 52 occupiers also did not vacate the premises though they had not challenged the action of Agricultural Produce Market Committee by filing any Civil Suit or otherwise.

-- On 22.12.88 a Notification was issued by the State Government declaring City Survey No.323 as sub market yard of Vegetables and Fruits; sub-market could not develop as the 106 occupiers had not vacated the premises and matters were sub judice before the Civil Court at Deesa.

-- Agricultural Produce Market Committee therefore resolved to settle the disputes with the occupiers and with the litigants in the Civil Suits on 28.1.91 because pending disputes with the occupiers, as aforesaid, the sub market yard was not developing.

-- On 13.9.91 in the special general meeting of the Agricultural Produce Market Committee, Resolution No.2 was passed empowering the Chairman to enter into the settlement with the occupiers and the litigants as under;-

1. 18 Traders (lease holder of the plots) who have constructed the superstructure at their cost and who have agreed to hand over the possession without claiming damages of the same, should be given shop on the terrace of cattle shed by charging 1,75,000/- towards the construction cost.

2. The 14 shops to be allotted to the 14 Traders, (permanent lease holder who shifted their business from Gandhi Chowk to the present Sub Market Yard at the request of A.P.M.C.) by charging construction cost of Rs.2,00,000/-- on the terrace of the cattle shed.

3. 20 shops at the Sub Market Yard to be allotted to the Panjra Pole by charging the construction cost as determined by the committee, as the Panjra Pole had agreed to hand over the possession of the lease hold plots with construction before the expiry of lease period and without claiming any damages.

4. 32 Traders occupying the open shed on rental basis shall be accommodated in the shops to be constructed on the first floor on the cattle shed by charging the construction cost that may be determined by the committee.

5. The 11 Traders occupying shops of A.P.M.C. on lease to be allotted the plots of shop cum go-down in the first phase of S.S.Market Yard (Principle Market Yard).

6. 8 Traders, occupying the shops below the office of Talk Sangh should be kept as it is and the rules of Vegetable market should be made applicable to the occupiers.

7. 2 shops should be allotted to the Akhol Mahadevia Co.Op.Society in the Vegetable Market in lieu of 2 go-downs of the Society.

8. 1 shop at the Vegetable Market to be allotted to the Ranpur - Vadavas Sahkari Mandali in lieu of the open shed.

-- On 14.9.91 settlement in terms of Resolution No.2 dated 13.9.91 was recorded before 502 Lok Adalat at Deesa.

-- During 15.9.91 to 20.5.92, 74 occupiers were accommodated as per the settlement, 8 occupiers could not be accommodated on the cattle shed as per Item No.1 and 2 of Resolution and 23 occupiers were waiting for the possession of the shops as the Vegetable market was not ready.

-- On 21.5.92 in the general body meeting of Agricultural Produce Market Committee, it was resolved by Resolution No.3 to allot 8 shops in the Vegetable Market Yard to traders and plot holders who could not be accommodated earlier in the shops as per item Nos.1 and 2 of the

Resolution No.2 dated 13.9.91 and as per the settlement before the 502 Lok Adalat.

-- On 2.3.94 at the general body meeting of the Agricultural Produce Market Committee it was resolved by Resolution No.9 to allot shops to 44 persons as recommended by the wholesale potato merchants and green vegetables merchants association by charging construction cost.

-- On 6.4.94 the Vegetable and Fruits Development Sub-committee vide Resolution No.2 resolved to allot one shop each to remaining traders as per the Resolution No.9 dated 2.3.94.

-- After the completion of construction work of the sub market yard, the general body meeting of the Agricultural Produce Market Committee vide its resolution No.13 resolved to charge the construction costs from the allottees as under:-

Rs.2,40,000/-- as the construction cost for 30' shop.
Rs.2,65,000/- as the construction cost for 35' shop.
Rs.2,85,000/- as the construction cost for 40' shop.
Rs.5000/-- towards transfer fees.
Rs.1500/-- towards yearly rent.

-- On 27.10.97 the Agricultural Produce Market Committee invited applications for allotment of shops from the agriculturists of Deesa Taluka producing vegetables as resolved by sub committee of Vegetable and Fruit.

-- On 16.12.97 it was resolved by Agricultural Produce Market Committee to allot 15 shops (out of 43 applications in pursuance of notice dated 27.10.97) by lucky draw to the agriculturists engaged in the production of vegetables.

3. In this background when the agricultural produce market committee decided to renovate the old market and started the construction for that purpose and the construction work of the sub market yard was over, the question came up with regard to the allotment of 20 shops. It was apprehended that the shops were likely to be allotted to traders who are not traders in the agricultural produce and that there was likelihood of allotting the same without following any procedure

prescribed by the Directorate of Agricultural Marketing and Rural Finance and the possession in pursuance of such allotment was to be handed over before 22.1.99 by the Agricultural Produce Market Committee and, therefore, Special Civil Application No.328/99 dated 13.1.99 was preferred before this court by traders i.e. Kisan Fertilizers and 24 others seeking a direction against the State of Gujarat and Deputy Director, Agricultural Marketing & Rural Finance and District Registrar, Co-operative Societies to see that the Agricultural Produce Market Committee makes the allotment of shops only in accordance with law and in compliance with the circulars issued by the State of Gujarat on 5.9.75 and 19.5.92 and from restraining the Agricultural Produce Market Committee from allotting shops in contravention of these circulars and to direct the respondents to allot the shops to the eligible persons through public auction. In this Special Civil Application No.328/99 the notice was issued on 15.1.99 returnable on 4.2.99 and ad interim relief in terms of para 6(B) was granted restraining the respondents from allotting the shops in sub market yard situated at Station Road, Deesa. It appears from the affidavit in rejoinder dated 4.2.99 filed by one Shri Prabhubhai Popatbhai Thakore - Petitioner No.1 in the Special Civil Application No.328/99 that an affidavit in reply had already been filed by one Shri Nanubhai Shantilal Shah, Chairman of the Agricultural Produce Market Committee, although we do not find such reply in the record of the Special Civil Application No.328/99. This Special Civil Application No.328/99 was decided and dismissed by the learned single Judge on 4.2.99 and the ad interim relief, which was granted on 15.1.99 while issuing the notice was vacated.

4. Against this order dated 4.2.99 passed by the learned single Judge, Letters Patent Appeal No.148/99 was preferred by the 25 original petitioners i.e. Kisan Fertilizers and 24 others, as aforesaid and on 9.2.99 notice returnable on 11.2.99 was issued. It appears that on 9.2.99 the Civil Application No.655/99 for stay in this matter had also come up before the Division Bench and in that Civil Application also notice returnable on 11.2.99 was issued and in the order sheet in this Civil Application No.655/99 the date of the order has been written as 11.2.99 by mistake. It must have been 5.2.99 instead of 11.2.99 because it is the returnable date which was 11.2.99. In any case, the fact remains that the order of status quo as on that day till 11.2.99 was passed by the Division Bench. On 7.3.2000 when the matter came up before the Division Bench it was found that shops had been allotted to 89 persons and these 89

persons were also to be arrayed as parties and therefore, on 7.3.2000 the Division Bench granted time to the learned counsel for the appellants to implead all these 89 persons as party respondents and notice upon them was directed to be served through Secretary of the Market Committee and the order of interim status quo granted earlier was continued till further orders and the matter was directed to be listed soon after service on the additional parties. It further appears that a Draft amendment was then moved on behalf of all the appellants seeking to implead 100 more persons as parties i.e. Ms. Vardhaji Nagaji and Co. to Neelmani Fruit Centre and this draft amendment was allowed by the Division Bench on 10.4.2000 raising the total number of respondents from 3 to 103.

5. It further appears that thereafter Civil Application No.3686/2000 was moved by 'Shree Deesa Shakbhaji Vepari Association', a Registered Public Trust under the Bombay Public Trusts Act, 1950 through its President Shri Pratapji Bhimaji represented by Shri Harin P. Raval, Advocate and through this Civil Application No.3686/2000 it is claimed that the members of the applicant trust are holders of licences issued by Deesa Nagar Palika under the Bombay Shops and Establishments Act, 1948 and that the members of this applicant-trust were engaged in the business of commission agent and were wholesalers for last number of years, that prior to the establishment of principal market yard at the State Highway there existed an old market yard, which was the principal market yard and there were approximately 70 shops. These 70 shops were demolished and out of these 70 shops, all shops were not of the ownership of Agricultural Produce Market Committee, Deesa and that there were approximately 30 shows which belonged to Panjarapole, Deesa, which were purchased on ownership basis from the said Panjarapole by the dealers and licence holders, who were dealing in grains, food grains, etc. and the remaining shops were of the ownership and were constructed by the Market Committee, that on account of demolition of the shops, which originally belonged to Panjarapole, a dispute arose and the matter was settled in Lok Adalat whereby it was decided to allot 20 shops to Panjarapole, Deesa in lieu of the 30 shops of the ownership of Panjarapole, Deesa, which were demolished for construction of the new sub market yard for the vegetables; whereas the Market Committee had resolved to allot 68 shops to existing persons, who were engaged in the trade and business of commission agents and wholesale dealers and retailers in vegetable and 20 shops were decided to be allotted to Panjarapole, Deesa, out of 119

shops which were proposed to be constructed in the sub market yard after demolition of the old shops, apart from the shops there were Ring Stall where the business was carried out by small retailers, who were semi wholesalers and who were also decided to be allotted shops which were to be newly constructed at the sub market yard by the Agricultural Produce Market Committee and that these 20 persons are also members of the applicant Trust, that pursuant to the aforesaid Resolution of the year 1994 letters had been issued to the members of the applicant Trust by the Agricultural produce Market Committee calling upon them to deposit building fund of Rs.50,000/-- being the first instalment of Rs.25000/-- to be deposited on or before 25.6.94 and the second instalment of Rs.25000/-- to be deposited before 20.7.94. Pursuant to this letter, 28 members of the applicant Trust deposited Rs.25,000/-- each, by letter dated 25.1.96 members of the applicant - Trust were called upon to deposit the second instalment of Rs.25000/-- on or before 20.7.94 and pursuant to this letter, members of the applicant - Trust deposited the second instalment of Rs.25,000/-- each, in 1999 further notices were issued to the members of the applicant Trust inter alia pointing out that a further amount of Rs.50,000/-- was required to be paid by each of the members of the applicant - Trust towards building fund in pursuance to the allotment of shops made to the members of the applicant - Trust and the members of the applicant - Trust deposited a further sum of Rs.50000/-- each, that the application dated 11.10.99 had also been made to the Chairman of the Agricultural Produce Market Committee by the applicant Trust pointing out that they are the real traders and commission agents carrying on business in the area of Market Committee, Deesa and despite of allotment and payment of huge sum of Rs.100000/-- by each one, which has been utilised towards construction of the shops by the Market Committee, no possession was given, and request was made to complete the allotment by giving possession of these shops to the members of the applicant - Trust, that not only members of the applicant - Trust were allotted shops in 1992, but huge amount of Rs.1,00,000/-- with interest in case of some of the members had been collected, which is lying as deposit since the years 1994, 1996 and 1999 in the sums of Rs.25,000/--, Rs.25,000/-- and Rs.50,000/--, that not only that the market Committee has earned interest on the aforesaid amount, but the present shops in question are constructed out of funds which were deposited by members of the Applicant - Trust, which were now sought to be auctioned so as to defeat the rights of the members of the applicant - Trust and on one hand the present shops

are constructed out of the funds of the members of the applicant - Trust, on the other hand the members of the applicant - Trust are left high and dry without any allotment in view of the challenge in the present proceedings and on yet another hand the right of the members of the applicant - Trust, at least 28 in number, is sought to be permanently jeopardised on the basis of the order, which has been obtained by the Market Committee in collusion with the original appellants without pointing out the true and correct facts and without pointing out that out of the only 30 biggest size shops of 480 sq.fts. available for allotment, 29 shops were sought to be auctioned so as to defeat the rights of 28 members of the applicant - Trust for no fault on the part of the members of the applicant - Trust, that during the pendency of these proceedings, the applicant had come to know that in view of the statement contained in the notice dated 19.5.2000, which is an advertisement proposing to hold auction of shops Nos.1 to 29 on 30.5.2000 and that the first line of the advertisement itself suggest that pursuant to the judgment rendered in the pending Civil Application No.2709/2000, the advertisement was sought to be issued for holding public auction, that the said advertisement was published in the news paper "Rakheval" in its Edition dated 20.5.2000, that members of the applicant trust had also been issued necessary licences by the Agricultural Produce Market Committee, that original petitioner in Special Civil Application No.328/99 sought writ of mandamus for allotment of the shops in accordance with law and in compliance of the circulars issued by the State of Gujarat dated 5.9.75 and 19.5.92 and restraining the Agricultural Produce Market Committee from allotting the shops in contravention of the circulars and a direction has been sought against the Market Committee to allot the shops to the eligible persons by public auction and that the Incharge Secretary of the Market Committee had issued a letter to the Applicant - Trust that in accordance with the Resolution fixing the price of the market committee, shops Nos.1 to 89 had been allotted to the members of the applicant - Trust, that the present Chairman of respondent No.1 Market Committee, namely, Shri Govabhai Desai belongs to the group of original petitioners in Special Civil Application No.328/99 and was acting in hand in glove with them and in order to benefit these original petitioners against the interest of the members of the applicant - Trust and, therefore, it is clear that this trust has to protect interest of its members and for this purpose it was necessary that the Trust is also impleaded as party respondents in this Appeal. It appears that Civil Application No.3686/2000 was moved

during vacation and on 29.5.2000 notice was issued and the service was waived on behalf of respondent No.1 by Mr.P.K.Jani and on behalf of respondents Nos.2 to 26 by Mr.K.S.Zaveri before the Vacation Judge on the same date i.e.on 29.5.2000 and on 28.8.2000 service was also waived on behalf of respondents Nos.27 and 28 by the learned AGP Ms. Harsha Devani. After hearing all the parties, Civil Application No.3686/2000 was allowed and the applicant Trust i.e. Shree Deesa Shakbhaji Vepari Association, Deesa was impleaded as respondent No.104 in this Letters Patent Appeal No.148/99 and the rule was made absolute.

6. It may be pointed out that Civil Application No.2709/2000 in Civil Application No.655/99 had been moved by the Agricultural Produce Market Committee, Deesa seeking permission to put on sale either all the 119 shops or the 29 shops out of 119 by way of public auction and in this Civil Application dated 10.4.2000 an order was passed by the Division Bench on 10.5.2000 that the order in the nature of status quo as has been passed by this Court in Civil Application No.655/99 was causing inconvenience to the Market Committee and it is not in a position to earn the revenue and whereas it was clear that out of 119 shops, at least for 29 shops there was no dispute or claim, it was just and proper to permit to auction in all 29 shops and, therefore, 29 shops identified as per the map may be disposed of by the Market Committee by public auction. In view of the statement made on behalf of the Market Committee that Rs.3,50,000/-- had been fixed as the upset price for each shop, it was ordered that keeping this fact in mind further proceedings be initiated by the Market Committee for auction of 29 shops and this Civil Application No.2709/2000 in Civil Application No.655/99 was disposed of accordingly.

7. On 28.8.2000 when all these matters came up before the Court, all these four Letters Patent Appeals were admitted by us. In Letters Patent Appeals Nos.129, 255 and 481 of 1999 service was waived on behalf of all the respondents, but in Letters Patent Appeal No.148/99 service of notice of admission was waived only by certain respondents and, therefore, we directed the issue of the notice of admission of appeal to unserved respondents Nos.4 to 15, 44 to 49, 50, 52,55,56,72 to 74, 75 and 82 to 103. On the same date i.e. on 28.8.2000 Civil Application No.655/99 in Letters Patent Appeal No.148/99 with Civil Application No.173/2000 in Civil Application No.655/99 in Letters Patent Appeal No.148/99 with Civil Application No.3687/2000 in Civil Application

No.2709/2000 in Civil Application No.655/1999 in Letters Patent Appeal No.148/99 came up before us. In these Civil Applications also Rule was issued. Service was waived as per the main appeals and the notice of rule was, therefore, issued to the remaining parties as ordered in the main Appeals. After hearing all the parties, who were present, undisputed factual position which emerged out was recorded to the effect that -

(i) 119 shops had been constructed by the Agricultural Produce Market Committee. Out of these 119 shops there were -

(a) 70 shops measuring 35 ft. and 12 ft.

(b) 24 shops measuring 30 ft. x 12 ft.

(c) 25 shops measuring 40 ft. x 12 ft.

(ii) The appellant in Letters Patent Appeal No.129/99 was not one of those who had been allotted 89 shops.

(iii) The case of the appellant in Letters Patent Appeal No.255/99 and Letters Patent Appeal No.481/99 was identical to the appellants in Letters Patent Appeal No.148/99 except for the fact that appellants in Letters Patent Appeal No.255/99 had demanded the shop in the year 1993 whereas the appellants in Letters Patent Appeals Nos.148 and 481 of 1999 had not made any such demand in 1993.

8. All the parties, which were present before the court on that day agreed to the following course of action to be taken in the facts and circumstances of the case and, therefore, with the consent and agreement of all the parties, which were present and represented before the court, 9 directions as under were issued:-

(i) It will be open for the Agricultural Produce Market Committee, Deesa to go ahead with the public auction of 29 shops out of the newly constructed 119 shops.

(ii) The APMC, Deesa shall select 17 shops out of 70 shops of measurement 35 ft. x 12 ft; 6 shops out of 24 shops of measurement 30 ft. x 12 ft.; and 6 shops out of 25 shops of measurement 40 ft. x 12 ft. by drawing lots by computer and such shops on the basis of draw shall be put to public auction.

(iii) For this purpose an advertisement shall be issued in widely circulated newspapers by the APMC with all details and conditions including the upset

price which can be decided by the Committee afresh and the upset price may be different than the one which was fixed earlier at Rs.3.5 lakhs. But while fixing the upset price the Committee shall keep in view the fact, i.e. different measurements in case of three types of shops as has been referred to hereinabove.

(iv) That through an advertisement as aforesaid, which will be issued on or about 1.9.2000, public auction shall be held on or about 18.9.2000.

(v) Since 89 shops had already been allotted earlier by Resolutions of the APMC, the remaining one shop out of 90 shops shall be meant for the appellant in Letters Patent Appeal No.129 of 1999. So far as the 90 shops, i.e. the shops other than 29 which are put to auction are concerned, the exercise for allotment shall be taken up by way of drawing lots by computer in which the appellant of Letters Patent Appeal No.129 of 1999 shall also be included.

(vi) At the public auction, which is to be held now, maximum price which is fetched at such auction in respect of the group of shops of each measurement, i.e. shops of 35 ft. x 12 ft., 30 ft. x 12 ft. and 40 ft. and 12 ft. shall be binding on the allottees as well as the appellant in Letters Patent Appeal No.129 of 1999 and all of them will have to pay accordingly.

(vii) Any amount which has already been deposited by the previous allottees, i.e. 89 in number shall be adjusted and they shall also be compensated with interest at the rate of 12% per annum, while computing the amount to be paid in terms of (vi) as above.

(viii) Order dated 10.5.2000 as has been passed by the Court in Civil Application No.279 of 2000 is modified accordingly and the order of status quo as was passed in Civil Application No.655 of 1999 in Letters Patent Appeal No.148 of 1999, stands vacated.

(ix) It is also ordered that circular dated 27th July 1998 as had been passed by the Director, Agricultural Marketing and Rural Finance against APMC shall not come in the way of APMC for the purpose of carrying out this order.

It was made clear that this order will be subject to final orders, which may be passed in the main matters because certain parties had been served only with the notice and the rule had been issued only on that day and the same was yet to be served upon certain parties. it was also ordered that this order be subject to the further and final orders, which would be passed in the main Appeals. The notices were made returnable for the date of 20.9.2000 and the parties were directed to come prepared for final disposal of all these matters and Civil Application No.567/99 moved in Letters Patent Appeal No.129/99 was also directed to be listed before the court on 20.9.2000. On 20.9.2000 when the matters came up before the court, it was directed that both the parties may place on record the details of further developments which had taken place after the order dated 28.8.2000. Before the matters could be taken up for final hearing, M.C.A.No.1626 of 2000 in Civil Application No.2709/2000 in Civil Application No.655/99 in Letters Patent Appeal No.148/99 was filed by the Deesa Shakbhaji Vepari Association for recall and review of the order dated 28.8.2000 i.e. condition No.(vi) contained in para 4 of that order seeking permission to withdraw the consent given by the learned advocate on behalf of the applicant - Trust to condition No.6 as contained in para 4. This Misc. Civil Application came up before the court on 9.10.2000 but the same was adjourned to 12.10.2000 as the learned counsel for the applicant was not available. Thereafter, the matters were heard. The details of the further developments, which had taken place after the order dated 28.8.2000, as has been filed, were traced out on 3.8.2001. Certain papers were also missing and the same were also traced out. In the meanwhile Civil Applications Nos.7701 to 7704 of 2001 were moved by the Agricultural Produce Market Committee. These Civil Applications came up before the court on 3.8.2001.Whereas the details of the subsequent developments, as had already been directed to be placed on record, had not been traceable and some other papers were missing, the same were traced out and the Civil Applications were directed to be listed on 7.8.2001. On 7.8.2001 the Board of these matters were issued only during the course of the day i.e. 7.8.2001 itself and also in view of the sick note and leave note filed by the lawyers, the matters were directed to be listed on 10.8.2001. The parties were again heard on 10.8.2001.

Civil Application No.173/2000 in Civil Application No.655/99 in Letters Patent Appeal No.148/99

for vacating the ex parte ad interim order passed on 9.2.99 in Civil Application No.655/99, which had remained pending, was disposed of as having become infructuous in view of the order dated 28.8.2000 passed in Civil Application No.655/99.

Misc. Civil Application No.1690/2000 in Civil Application No.2709/2000 in Civil Application No.655/99 dated 4.10.2000 had also been moved on behalf of M/s. Vardhaji Nagaji And Co. and 13 others i.e. 14 persons in all with the prayer for review/modification/recall of the order dated 28.8.2000, particularly clause (vi) as contained in para 4 and the same is pending.

Civil Application No.9294/2000 in Letters Patent Appeal No.148/99 was an application by one Joshi Dayarambhai Jivabhai seeking to implead as respondent in Letters Patent Appeal No.148/99 and the same was decided on 16.10.2000 permitting the applicant as an intervener and this Civil Application was disposed of accordingly. This applicant, who was permitted as an intervenor, is represented by Mr.B.B.Naik.

Yet another Civil Application No.8792/2000 was moved in Letters Patent Appeal No.148/99 by applicant Jayantilal Badarmal Shah and two others for being impleaded as respondents in Letters Patent Appeal No.148/99, but this Civil Application was also decided on 16.10.2000 by permitting these three applicants as intervenors. These three applicants are represented by Shri Y.M.Thakkar.

Civil Application No.9293/2000 in Letters Patent Appeal No.148/99 was moved for bringing legal representative of respondent No.59 on record and this Civil Application was allowed and the legal representatives of the deceased respondent were permitted to be brought on record as legal representative of deceased respondent Kanchanji Sarupaji and this Civil Application was decided on 16.10.2000.

9. 4 Special Civil Applications had been rejected on the ground of availability of the alternative remedy and for not availing such alternative remedy, which was available under Sections 47 and 48 of the Gujarat Agricultural Produce Markets Act, 1963. We would have certainly gone into the question of considering as to whether the petitions have been rightly rejected on the ground of alternative remedy or not or as to whether the alternative remedy available under Sections 47 and 48 was equally efficacious and adequate remedy or not, but we

find that various orders have been passed during the pendency of these proceedings and parties have also proceeded to take steps on that basis. Out of 119 shops, which was constructed by the Agricultural Produce Market Committee, 29 shops have already been subjected to auction after the passing of the order dated 28.8.2000 by this court and, therefore, we do not find it fit at this stage to relegate the petitioners to the alternative remedy under Sections 47 and 48 of the Act. Further although applications had been made for recalling condition No.(vi) of the order dated 28.8.2000, when the parties have been heard again on the Civil Applications Nos.7701 to 7704 of 2001 moved by the Agricultural Produce Market Committee seeking some more direction, with the consent of allottees of the 1st category and without the consent of allottees of 2nd and 3rd categories we give the following directions:

I. Out of 119 shops in all, so far as 29 shops are concerned, they stand already allotted in terms of this court's order dated 28.8.2000 and there is no dispute about those 29 shops either with regard to their allotment or with regard to their auction.

II. Now 89 shops remain out of 119. These shops have been allocated in 3 categories:

(a) 20 shops to Juna Deesa Mahajan Panjarapole, Juna Deesa.

(b) 8 shops to old traders.

(c) 2 to Co-operative Societies, namely, The Akhol Mahadeviya Group Seva Sahakari Mandali Ltd., Deesa and the Ranpur Vadavas Vividh Karyakari Sahakari Mandali Ltd., Deesa.

(d) 1 more shop to Jaswantlal Shantilal Shah, who was having a open shed from very beginning.

The total of these shops comes to 32. All these 32 parties had surrendered their shops for the purpose of bringing out a new market yard. it is also submitted that with regard to 31 parties out of these 32, a settlement had been arrived at before 502 Lok Adalat in pending civil cases and these parties had also deposited a sum of Rs.1.75 lacs to 2 lacs with the Agricultural Produce Market Committee in the year 1991 and/or about 1991 and it is out of these deposits that the task of construction of the new market yard was taken up by the Agricultural Produce Market Committee. So far as these 32 parties are concerned, it was suggested that the Agricultural

Produce Market Committee may charge a sum of Rs.4 lacs, 3.50 lacs and 3 lacs for the shops measuring 480 ft., 420 ft. and 360 ft. respectively against the respective shops, which have been allotted to them and they have to pay on that basis i.e. the upset price which was fixed by the Agricultural Produce Market Committee on the basis of the market value and assessment by the Surveyor in the auction, which were held in September 200, after this court's order dated 28.8.2000 and the Agricultural Produce Market Committee is directed that the credit of the amount deposited by each of the parties with interest at the rate of 12% per annum from the date of deposit till the date they occupy these shops shall be given to them. It is also agreed that in case if we add the interest of 12% per annum on the deposit already made by them, if the amount exceeds Rs.4 lacs, 3.50 lacs and 3 lacs such amount shall not be claimed as a refund by any of the parties, but in case it falls short of the upset price the same shall be made good by concerned parties. This exercise shall be completed within a period of one year in intallments, as may be agreed by the Committee. This suggestion is acceptable to the learned counsel appearing on behalf of these 32 parties, as also the Market Committee and, therefore, so far as these 32 parties belonging to the aforesaid category is concerned, the dispute stands resolved. These are allottees under the Resolution dated 13.9.91 and one addition, namely, Jaswantlal Shantilal Shah in the year 1991.

III. Second category is the one of the traders i.e. 43 traders under Resolution dated 2.3.94. All these traders were holders of the licence for selling vegetable and fruit at the time when the task of construction of the new market was to be taken up and they had also deposited a sum of Rs.50000/-- to Rs.100000/-- each in the year 1994-1995-1996. To these 43 parties we give the following options:-

(i) Either these parties may retain the shops allotted to them and the allotment made to them in the year 1994 shall be final, should they accept to make payment of Rs.9.34 lacs for the shop measuring 480 ft., Rs.7.48 lacs for the shop

measuring 420 ft and Rs.6.98 lacs for the shop measuring 360 ft. i.e. the shops for which the upset price was fixed as aforesaid in the auction, which was held on 12.9.2000 after this Court's order dated 28.8.2000 and in that case they will also be given the credit of the amount deposited by each of them + the interest at the rate of 12% per annum from the date of the deposit till the possession is offered to them by the Agricultural Produce Market Committee. In that case they will also be given a period of one year for depositing the remaining amount in installments as may be agreed by the Agricultural Produce Market Committee. It will also be open for the Committee to extent the time if need be thereafter on the request of these parties. In case they accept this alternative, they have to convey their acceptance within a period of one month.

(ii) In case such acceptance is not received by the Market Committee from these 43 parties, these 43 shops shall be subjected to auction now and for that purpose the upset price shall be fixed by the Market Committee independently on the basis of the location of each shop. It will be open for all the parties to participate in that auction and in case they succeed in their bid, credit of the amount deposited by them shall be given on the same lines as indicated in the first alternative. In case these 43 traders or any of them choose not to accept either of the two alternatives, as aforesaid,they or he may approach the Market Committee for refund of the amount deposited by them or him. It will be open for them to approach the Market Committee for refund of the amount alongwith reasonable rate of interest thereon and the Market Committee shall consider their request in accordance with law and pass appropriate orders within a period of one month from the date of such request.

IV. So far as remaining 15 shops are concerned, we find that these shops were allotted to 15 agriculturists by Resolution dated 16.12.97 and without following any procedure and without any background so as to allot these shops to them. There are allegations of favouritism in this regard which have precipitated the filing of the present matters before this court. It has been alleged that these shops were allotted to the

relatives of erstwhile office bearers of the Agricultural Produce Market Committee and it was given in a wholly arbitrary manner. So far as these 15 shops are concerned, it has been suggested by Mr. P.K.Jani on behalf of the Agricultural Produce Market Committee that the allotments made to these 15 agriculturists may remain intact in case they are prepared to pay the average auction price, which was fetched by shops of 480 ft. at Rs.9.34 lacs, the shops of 420 ft. at Rs.7.48 lacs and the shops of 360 ft. at the rate of Rs.6.98 lacs as per auction held on 12.9.2000 after this court's order dated 28.8.2000. In case these 15 agriculturists, to whom allotment was made in the year 1997, do not accept this suggestion, it will be open for the Agricultural Produce Market Committee to go ahead with the auction of all these 15 shops afresh by fixing upset price according to the now prevailing market rate looking to the location of each of these shops and it will be open for these 15 agriculturists also to participate in such auction and in case they succeed they will also be entitled to the benefit of the amount with interest at the rate of 12% per annum from the date of deposit till the date of possession offered to them by the Market Committee.

We order accordingly.

These directions, as recorded hereinabove, are with the consent in case of the parties belonging to first category and without consent in case of category Nos.2 and 3. This order shall henceforth govern the rights of the parties. The orders passed by the learned single Judge in each of these Special Civil Applications are hereby set aside and all these 4 appeals are allowed to the extent as above. No order as to costs.

However, it is ordered that none of these allottees shall alienate or transfer these allotted shops to any other party for a period of at least three years.

In view of the order passed in the main matters, Civil Applications Nos.7701 to 7704 of 2001 does not survive and the same are disposed of accordingly.

In view of the order passed in the main matters, Civil Application No.655/99 does not survive and the same

is disposed of accordingly. Notice discharged. Interim relief vacated.

In view of the order passed in the main matters, Civil Application No.567/99 does not survive and the same is disposed of accordingly. Notice discharged. Interim relief vacated.

In view of the order passed in the main matters, Civil Application No.1571/99 does not survive and the same is disposed of accordingly.

In view of the order passed in the main matters, Civil Application No.3687/2000 does not survive and the same is disposed of accordingly. Notice discharged. Interim relief vacated.

In view of the order passed in main matters, Misc. Civil Application Nos. 1626 and 1690 of 2000 does not survive and the same are disposed of accordingly.

In view of the order passed in the main matters, Civil Application No.174 of 2000 does not survive and the same is disposed of accordingly.

(M.R.Calla,J)

(R.R.Tripathi,J)